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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,195	12/31/2003	Kenichi K. Yabusaki	03-YAB-116	2552
23843	7590	07/13/2005	EXAMINER	
FOOTHILL LAW GROUP, LLP 3333 BOWERS AVE., SUITE 130 SANTA CLARA, CA 95054			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/751,195

Applicant(s)

YABUSAKI, KENICHI K.

Examiner

James N. Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 6-7, 9, 13 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wortham US 4,750,636.

Wortham '636 discloses a soft transparent flexible plastic bag (15), with an opening (17), applied to a transparent container (11). The slit is opening (17).

Regarding the use of the container for storing pieces of split-shot, Examiner notes it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wortham US 4,750,636.

Wortham '636 does not teach the size of the bag.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the bag taught by Wortham '636, forming it to fit a 1-dram bottle, or to any other suitable size, motivated by the benefit of providing a snug fit around the container opening.

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Furthermore, Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

4. Claims 3-4 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wortham US 4,750,636 in view of Tyree US 2001/0035414.

Wortham '636 does not disclose intersecting slits.

Tyree '414 teaches placing intersecting slits on a flexible bag to provide an opening therethrough. Slit-openings are known to reclose, and cover the opening, after passing an object therethrough.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the opening of Wortham '636, providing intersecting slits, as taught by Tyree '414, motivated by the benefit of providing a reclosable opening through the bag.

5. Claims 8 and 10-12 rejected under 35 U.S.C. 103(a) as being unpatentable over Wortham US 4,750,636 in view of Lovelace et al. US 6,036,038.

Wortham '636 does not teach container neck threading.

Lovelace '038 teaches it is known to provide a glass container neck with threads.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide threads on the neck opening of the container of Wortham '636, as taught by Lovelace '038, motivated by the benefit of securing a cap by a threaded connection on the container.

Regarding claim 12, Wortham '636 does not teach the size of the bag.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the bag taught by Wortham '636, forming it to fit bottles ranging from 0.5 dram and 2 dram bottle, or to any other suitable size, motivated by the benefit of providing a snug fit around the container opening. Furthermore, Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Further regarding claim 12, Wortham '636 does not teach the container being formed of glass.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Wortham '636 of glass, as taught by Lovelace '038, because it is well known to form containers of glass, or any other suitable material. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 5 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Wortham US 4,750,636 in view of Bordage US 6,199,719.

Wortham '636 does not teach a means to hang the container.

Bordage '719 teaches a means for hanging a tube, comprising a hole (27) in a bag, and a loop (35) secured therethrough.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bag of Wortham '636, providing a hole and a loop, as taught by Bordage '719, motivated by the benefit of providing a means to hang the bag.

### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:  
See attached PTO-892 citing references teaching various closures with intersecting slits.

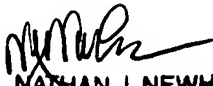
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER